



***Raj'i Talaq Law According to the Shafi'i School in Polyandry Cases***  
**(Case Study of Banda Aceh Shar'iyah Court Decision Number**  
**383/Pdt.G/2020/MS. Bna)**

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**Abstract**

Islamic law and Indonesian legislation basically emphasize that marriage can only have one partner. In the Shafi'i school, Ash-Sharbini al-Khatib says, "A man, circumcision does not marry more than one wife without clear *hajat*. An-nash has pointed out that the principle of marriage is monogamy, not polygamy. The wife or a woman cannot marry more than one husband at the same time (polyandry) because of the impact caused. Polyandry is clearly forbidden as has been said by Allah Almighty. in QS. An-Nisa verse 24. In decision No. 383/Pdt.G/2020/MS. The bna polyandry is one of the reasons for divorce with the dropping of *talaq* one *raj'i*. The question in this thesis is how the right of *talaq* possessed by a husband how to analyze the Decision of the Judge of the Shar'iyah Court of Banda Aceh, and why the case of polyandry as a background for the breakup of marriage is broken with *talaq* *raj'i*. In this study, the author uses library research methods to analyze the judge's consideration and the Shafi'i school in terms of holding *talaq* rights on the grounds that they are caused by polyandry. There are several factors that make the existing legal provisions and procedures different, in the Shafi'i school in terms of privacy such as *talaq* is very guarded because it is considered bad if there are parties outside who know the domestic affairs, in contrast to the judge's consideration, the procedures of the Shar'iyah Court, the benefit of divorce is regulated to reduce illegal divorces that are not in accordance with the existing Shari'a. Therefore, it can be concluded that the difference that we can see between the judge's consideration and the Shafi'i school is the freedom of the husband to impose *talaq* anywhere and anytime, and the determination of the amount of *talaq* based on the husband's own intentions.

**Keywords:** *Talak Raj'i*, Polyandry, Verdict, Judge's Consideration, Shafi'i School

### Abstrak

*Hukum Islam dan perundang-undangan Indonesia pada dasarnya menekankan bahwa pernikahan hanya boleh memiliki satu pasangan. Dalam mazhab Syafi'i, Asy-Syarbini al-Khatib mengatakan, "Seorang pria, tidak boleh menikahi lebih dari satu istri tanpa hajat yang jelas. An-nash telah menunjukkan bahwa prinsip pernikahan adalah monogami, bukan poligami. Seorang istri atau wanita tidak boleh menikah dengan lebih dari satu suami dalam waktu yang bersamaan (poliandri) karena dampak yang ditimbulkan. Poliandri jelas-jelas diharamkan seperti yang telah difirmankan oleh Allah Swt. dalam QS. An-Nisa ayat 24. Dalam putusan No. 383/Pdt.G/2020/MS. Bna poliandri menjadi salah satu alasan perceraian dengan jatuhnya talaq satu raj'i. Yang menjadi pertanyaan dalam skripsi ini adalah bagaimana hak talaq yang dimiliki oleh seorang suami bagaimana analisis terhadap Putusan Hakim Mahkamah Syar'iyah Banda Aceh, dan mengapa kasus poliandri sebagai latar belakang putusnya perkawinan yang diputus dengan talaq raj'i. Dalam penelitian ini, penulis menggunakan metode penelitian kepustakaan (library research) untuk menganalisis pertimbangan hakim dan mazhab Syafi'i dalam hal penahanan hak talaq dengan alasan karena poliandri. Ada beberapa faktor yang membuat ketentuan dan prosedur hukum yang ada berbeda, dalam mazhab Syafi'i dalam hal privasi seperti talaq sangat dijaga karena dianggap tidak baik jika ada pihak luar yang mengetahui urusan rumah tangga tersebut, berbeda dengan pertimbangan hakim, prosedur Mahkamah Syar'iyah kemaslahatan talak diatur untuk mengurangi talak-talak liar yang tidak sesuai dengan syariat yang ada. Oleh karena itu, dapat disimpulkan bahwa perbedaan yang dapat kita lihat antara pertimbangan hakim dengan mazhab Syafi'i adalah kebebasan suami untuk menjatuhkan talak dimanapun dan kapanpun, serta penentuan jumlah talak berdasarkan niat suami itu sendiri.*

**Katakunci:** *Talak Raj'i, Poliandri, Putusan, Pertimbangan Hakim, Mazhab Syafi'i*

### Introduction

Islamic law and Indonesian law basically emphasize that marriage can only have one partner, although there are exceptions for men if they want to have more than one wife, with various terms and conditions in order to be polygamous.<sup>1</sup> In the Shafi'i school, Ash-Syarbini al-Khatib says, "A man, circumcision does not marry more than one wife without clear *hajat*. *An-nash* has pointed out that the principle of marriage is monogamy, not polygamy."<sup>2</sup> There is a difference between some scholars who argue that the principle of marriage is polygamy which means polygamy is sunnah.

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<sup>1</sup> Dahlia Haliah Ma'u, "The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 2 (2023). Nina Nurmila, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah: Journal of Islamic Studies* 54, No. 2 (2016). p. 427. Sri Rizki, et.al., "Polygamy in The Indonesian Marriage Law System, *Meraja Journal* 3, No. 3 (2020).

<sup>2</sup> Wahbah Zuhaili, *Fiqh Imam Syafi'i*, Vol. 1, (Jakarta: Almahira, 2010), p. 476.

Law Number 1 of 1974 Article 4, and Compilation of Islamic law (*Kompilasi Hukum Islam/KHI*) Chapter IX also emphasize that marriages that are allowed to have more than one wife have their own provisions and conditions (the principle of monogamy).<sup>3</sup> So that marriage of more than one wife is indeed very closely guarded and serious in order to reduce the impact or more complex household problems in the future.

The wife or a woman cannot marry more than one husband at the same time (polyandry) because the impact caused is more towards mudharat than the benefits obtained. Polyandry is clearly forbidden as has been said by Allah Almighty. in QS. An-Nisa Verse 24:

﴿وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كَتَبَ اللَّهُ عَلَيْكُمْ وَأَحْلَلْ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا تَرَضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

It means: "And (it is forbidden also for you to marry) a woman who has a husband, except those slaves that you have (Allah has established the law) as His decree over you. And it is lawful for you besides such (that is) to seek wives with your property to marry, not to commit adultery. Then those wives whom you have enjoyed (interfered) among them, give them their dowry (perfectly), as an obligation; and there is no reason for you for something which you have given up each other, having determined the dowry. Verily, God is All-Knowing, All-Wise."

Based on the Qur'anic verse, it is clear that women cannot marry while still bound by another marriage (polyandry). As in the case of divorce talaq in decision Number 383/Pdt.G/2020/MS. Bna polyandry as a reason for the breakup of marriage.<sup>4</sup> Considering the relationship between the Applicant and the Respondent is a legal husband and wife the Applicant has legal standing in filing a divorce application against the Respondent.

In the ruling, polyandry is one of the reasons for divorce, since the beginning polyandry was not discussed further in Islamic law and fiqh madhab because the law regarding polyandry marriage is clear. What is interesting to discuss is that the verdict was only handed down with talaq one raj'i, which in Islamic fiqh, especially the Shafi'i school itself positions the right of talaq in the hands of the husband completely. Based on the explanation above, this article examines the issue of Raj'i Talaq Law According to the Shafi'i School in Polyandry Cases (Case Study of Banda Aceh Shar'iyah Court Decision Number 383/Pdt.G/2020/MS. Bna).

<sup>3</sup> Law No. 1 of 1974 Concerning Marriage and Compilation of Islamic law Presidential Instruction, No. 1 in 1991. Ismi Lathifatul Hilmi and Armi Agustar, "Review of Islamic Law and Positive Law: Regarding the Obligation to Comply with the Marriage Law," *El-Aqwal Journal of Sharia and Comparative Law*, 2023.

<sup>4</sup> Banda Aceh Syari'iyah Court Decision Number 383/Pdt.G/2020/MS. Bna

### Talak Raj'i in the Case of Polyandry

Etymologically, talaq is the masdar form of طلق with its lam fathah. Talak means letting go and leaving. While in terminology talaq is to release the marriage bond in whole or in part.<sup>5</sup> It can also be interpreted by removing the marriage bond with lafadz talaq or the same meaning, or eliminating the marriage bond immediately or a certain distance of time using a certain lafadz.

Talak linguistically means "untie" and "separate" while in shara', talaq means to untie marriage with the word "talaq" (divorce) or the like.<sup>6</sup> The recitation of talaq has existed since the days of ignorance. The ignorant population used it when releasing dependents, but it was limited to three times. Hadith Zubayr (r.a) says: "In the past man rejected his wife without limits and numbers." A man who rejects his wife, when he is nearing the end of the waiting period, he returns and refuses again and so on, then comes back again with the intention of hurting women, so the verse comes down:

الطَّلُقُ مَرَّتَانٍ فَإِمْسَاكُهُ بِمَعْرُوفٍ أَوْ تَسْرِيحُهُ بِإِحْسَانٍ وَلَا يَجِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلَّا أَنْ يَخَافَا أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَإِنْ خِفْتُمْ أَلَّا يُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: Talaq (which can be referenced) twice. After that, you can refer again in a ma'ruf way or divorce in a good way. It is not lawful for you to take back something from what you have given them unless both are worried that they will not be able to live the laws of Allah. If you are worried that both of them (husband and wife) cannot live God's laws, then there is no sin against either of them about the payment given by the wife to redeem herself. These are the laws of God, so do not break them. Those who break the laws of God are tyrants. (QS. al-Baqarah [2]: 229)

The Shafi'i School holds that marital separation consists of talaq and fasakh.<sup>7</sup> In the dropping of talaq, there are two kinds of forms of talaq pronunciation, namely the first *sharih* pronounced clearly, and *kinayah*, which is pronounced with satire.<sup>8</sup> Talak *sharih* does not require intention because the pronunciation is clear, while *kinayah* in its pronunciation has no real meaning or is only figurative, requiring intention in the dropping of talaq.

Talak raj'i itself is talaq that gives the husband the opportunity to invite back the wife who is rejected in a marriage bond, without using a new contract, as long as she is still in the period of 'iddah. According to Shafi'iyah, Malikiyah, and Hanabilah scholars, any type of talaq other than that performed before intercourse or talaq accompanied by compensation of property as in the case of khulu', or triple talaq or

<sup>5</sup>Elkafilah.wordpress.com. *Talaq*. Retrieved via site: [https://elkafilah.wordpress.com/2012/05/23/talak/#\\_ftn2](https://elkafilah.wordpress.com/2012/05/23/talak/#_ftn2), on June 26, 2022.

<sup>6</sup>Wahbah Zuhaili, *Fiqh Imam Syafi'i Volume 2* (Jakarta: Almahira Publishers, 2017), p. 606.

<sup>7</sup>Wahbah Zuhaili, *Islamic Fiqh vol. 9*, (Jakarta: Gema Insani, 2011) p. 315.

<sup>8</sup> Abu Shuja, *Fiqh Sunnah Imam Shafi'i*, (Sukmajaya: Fathan Media Prima, 2018), p. 216.

perfecting triple talaq, whether *sharih* or *kinayah talaq*, then all of these include raj'i talaq.<sup>9</sup> Clearly, *talak raj'i* is the *talaq* that a husband drops to his wife as talaq one or talaq two. If the wife has the status of *iddah talaq raj'i*, the husband may refer to his wife without a new marriage contract, without testimony, and without a new dowry.<sup>10</sup>

The explanation of each of the various types of talaq is as follows:

1. Talak Sharih and Kinayah

Talak sharih is the redaction of talaq which is pronounced clearly, the clear meaning is that it means directly as the pronounciation mentioned, the condition of talaq sharih falls when one of the 3 pronunciations is mentioned in the talaq editor, namely divorce, separation (*firaq*), and release (*sirah*). Kinayah is talaq which in the pronounciation of the sentence or redaction has a figurative meaning, and can mean other than the sentence or the redaction itself, for example from talaq *kinayah*, "You are free"<sup>11</sup>

2. Sunni Talaq and Bid'i

Sunni talaq is talaq that is not forbidden because it is in accordance with the advice contained in the word of Allah SWT "You should divorce them when they can (face) their proper iddah" QS. ath-Thalaaq [65]: 2. Talak bid'i is talaq that is forbidden due to violations or the implementation of talaq that is not recommended, in the case of talaq bid'i this can be seen in the example of a case where the husband rejects his wife while menstruating without any compensation, this will prolong the wife's iddah period.<sup>12</sup>

3. Talak Munjiz and Mua'llaq

Munjiz talaq is classified as the most basic and general talaq, in the imposition of talaq the legal consequences can immediately fall without any delay and under certain conditions. While *talaq mua'llaq* is talaq that requires an explanation of the statement of talaq to find out whether the law is valid or not, in clicking talaq *mua'llaq* can be accompanied by conditions such as nature, time, place, or other conditions.<sup>13</sup>

4. Talak Raj'i and Ba'in

Raj'i talaq is one or two talaqs which still gives the husband the opportunity to refer to his wife without using a new contract, while still in the iddah period. Talak ba'in is the triple talaq which does not have the opportunity to refer back to his wife, as for the division of talaq ba'in namely, ba'in kubra and ba'in sugra.<sup>14</sup>

Talak has pillars and conditions that must be met, starting from harmony, there are five pillars of talaq, namely; the one who refuses, shigat or the words of

<sup>9</sup> Wahbah Zuhaili, *Fiqh of Imam Shafi'i Volume 2 ...*, p. 629.

<sup>10</sup>Tihami and Sohari Sahrani, *Fikih Munakahat*, cet 2, (Jakarta: PT Raja Grafindo Persada, 2010), p. 244.

<sup>11</sup>Wahbah Zuhaili, *Fiqh of Imam Shafi'i Vol. 2 ...*, p. 670.

<sup>12</sup>Wahbah Zuhaili, *Fiqh of Imam Shafi'i*, p. 608.

<sup>13</sup>Wahbah Zuhaili, *Fiqh of Imam Shafi'i*, p. 612.

<sup>14</sup>Wahbah Zuhaili, *Fiqh of Imam Shafi'i*, p. 629.

talaq, the person who is rejected, guardianship, and intention. As for the talaq has four types of laws, namely obligatory, sunnah, haram, makruh, and mubah based on the reason, the basic law of talaq is makruh.

The legal consequences or legal consequences derived from the implementation of talaq raj'i are seen according to the Shafi'i school. First, the amount of talaq that the husband has decreases, where the husband has the amount of talaq rights three times. The Prophet (peace be upon him) was once asked about the words of Allah Almighty, "Talak (which can be referred to) twice," (QS. al Baqarah [2]: 229). Someone asked, "What about the third talaq?" he replied, "or let go well." Abu Dawud, Ibn al-Qathan narrated this hadith.<sup>15</sup> Second, when talaq raj'i is dropped, what happens is that it is forbidden to have intercourse according to the Shafi'i school, having fun with a wife who has been rejected before reconciliation, even if only looking without shahwat the law is haram. Third, in the dropping of talaq raj'i, the husband of masi has the right of reconciliation during the period of iddah, *so if the iddah has ceased his wife becomes haram for him*.

### **Polyandry in Islamic Legal Perspective**

Polyandry is a marriage system that allows a woman to have more than one husband at the same time.<sup>16</sup> Polyandry is a form of polygamy, where a woman has more than one husband.<sup>17</sup> During this time, many people's misconceptions related to polygamy. Emerging understandings identify polygamy as marriage between one man and several women. Whereas in essence, polygamy is a form of marriage in which one party has more than one partner. Polygamy is divided into three groups, namely polygyny, polyandry, and group marriage.

Polyandry has juridical risks, because in the case of polyandry, it will cause overlapping in family and social systems in life.<sup>18</sup> The source of the prohibition of polyandry has been regulated in the Qur'an and the Civil Code, and polyandry marriages include vanity and *fasid* marriages.

The prohibition against polyandry marriage is expressly mentioned in the Qur'an Surah An-Nisa' verse 24:

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<sup>15</sup>Wahbah Zuhaili, *Fiqh of Imam Shafi'i*, p. 595.

<sup>16</sup>Departemen Pendidikan dan Kebudayaan, *Kamus Besar Indonesian Pusat Bahasa*, (Jakarta: PT Gramedia Pustaka Utama, 2011), p. 1089. Eti Mul Erowati and Ikama Dewi Setia Triana, "Juridical Analysis of Polyandry Marriages Reviewed from Law Number 1 of 1974 on Marriage," *Jurnal Komunikasi Hukum (JKH)* 8, No. 2 (2022), p. 1-9.

<sup>17</sup> Misran and Muza Agustina, "Factors of Polyandry in Society (Case Study in Pidie Jaya Regency)," *Samarah: Journal of Family Law and Islamic Law* 1, No. 1. (2017), p. 259.

<sup>18</sup>Nur Yasin, *Sasak Islamic Marriage Law*, (Malang: UIN-Malang Press, 2008), p. 262. Najichah Najichah, "Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions," *Walisono Law Review* 4, No. 2 (2022), p. 221-256.

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كَتَبَ اللَّهُ عَلَيْكُمْ وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسْفِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَءَاتُوهُنَّ أَجُورَهُنَّ فَرِيضَةً وَلَا جُنَاحَ عَلَيْكُمْ فِي مَا تَرَضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

It means: "And (it is forbidden also for you to marry) a woman who has a husband, except those slaves that you have (Allah has established the law) as His decree over you. And it is lawful for you besides such (that is) to seek wives with your property to marry, not to commit adultery. Then those wives whom you have enjoyed (interfered) among them, give them their dowry (perfectly), as an obligation; and there is no reason for you for something which you have given up each other, having determined the dowry. Verily, God is All-Knowing, All-Wise."

Imam Shafi'i interprets the above verse further by saying,<sup>19</sup> "Women who have husbands, whether free women or slaves are forbidden to other than their husbands, until their husbands are separated from them because of death, divorce or fasakh marriage, except al-sabaya (female slaves owned by war whose husbands are not taken captive together).

The hadith as a postulate that forbids polyandry are:

من كان يؤمن بالله واليوم الآخر فلا يسق ماءه ولدغيره (رواه الترمذی)

It means: "Whoever has faith in Allah and the next day shall not water the seed water of others (that is, he shall not gather the wives of others (HR. Al Tirmidhi)."

Furthermore, the hadith that confirms the law of marriage with 2 guardians is as follows:

أما امرأة زوجها وليان فهي للأول منهما، ومن باع بيعة من رجلين فهو للأول منهما (رواه الترمذی)

It means: "Whoever is married by two guardians, the woman's legal marriage is to the first of the two." (HR. Al Tirmidhi)."

The wisdom of banning women who already have this bond aims to prevent attacks on the rights of others and prevent the mixing of *nasab*. It can be concluded that polyandry marriage is prohibited based on the above propositions because the first husband's bond is an obstacle to the second marriage, and automatically the second marriage does not count as a marriage that is harmonious and its conditions are fulfilled properly, therefore the marriage becomes facidic, or damaged.

An event is always accompanied by a cause that will cause an effect or effect, as well as polyandry marriage, polyandry as a forbidden marriage still exists in society, this can occur due to several factors such as economic factors, lack of

<sup>19</sup>Nur Yasin, *Sasak Islamic Marriage Law*, p. 327.

understanding, and awareness related to religion and law, unmet mental livelihood needs.

Of these three factors, there are similarities that we can see, namely the occurrence of polyandry because these three factors are not fulfilled properly in the household, thus making the relationship in the household easily shaky and vulnerable, thus making polyandry an option for those who cannot meet these three factors.

### ***Raj'i Talaq Review of Judgment No. 383/PDT. G/2020/MS. BNA According to the Shafi'i School***

In decision 383/Pdt.G/2020/Ms.Bna which was decided by the fall of talaq, in which the husband as the petitioner wanted to be given permission to impose talaq on the wife as a respondent before the court, as divorce cases in general.<sup>20</sup> On October 27, 2020, the husband filed a divorce application which had been registered at the Registrar of the Shar'iyah Court of Banda Aceh with Register Number 383/Pdt.G/2020/MS. Bna dated October 27, 2020.

The parties involved between the Petitioner and the Respondent are legal husband and wife, married on December 22, 1989, at the Baiturrahman Office of Religious Affairs, by deed of married numbered 347/17/XII/1989, issued on December 22, 1989. The husband and wife resided in a joint residence namely Jaya Baru sub-district, Banda Aceh City for 28 years, from which the Applicant and Respondent were blessed with three children. The domestic problems began in 2017, when the Respondent as a wife left the house and remarried another man (polyandry) this argument was corroborated by two witnesses who stated that the Respondent or the wife had cheated and remarried. Since May 29, 2017, the Respondent has left home and has never been reunited and there is no communication between husband and wife.

The factors for the occurrence of infidelity or polyandry marriage can be seen in decision Number 383 / Pdt.G / 2020 / MS. Bna started in economic problems that resulted in disputes between the two parties so that there was no longer a harmonious life in the household. The relevant parties have also taken action or efforts to reconcile both parties by means of deliberation involving the family of the Respondent, Gampong Apparatus, and community leaders located at the keuchik office on July 22, 2017. From the marriage between the Applicant and the Respondent have 3 children, two girls and one boy of which all three are adults and choose to live with the Applicant. It is therefore concluded that the problem at hand makes it difficult to maintain the bond between the Petitioner and the Respondent to form a household that is consistent with the purpose and purpose of a marriage.

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<sup>20</sup> Syahrizal Abbas and Datul Mutia, "Putusan Talak Raj'i pada Kasus Poliandri: Analisis Hukum Islam terhadap Putusan Hakim Mahkamah Syar'iyah Jantho Nomor 216/Pdt.G/2015/MS-JTH," *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 3, No. 1 (2019), p. 205.



**Judge's Consideration in Deciding Case Decision Number 383/Pdt.G/2020/MS. Bna**

The conclusions of the considerations used by the judge can be seen in the following table:

<b>Judge's Consideration</b>	<b>Conclusion</b>	<b>About</b>
Qur'an	1. Q.S Ar-rum [30]: 21	Goal of Marriage
	2. Q.S Al-Baqarah [2]: 227	<i>Talak</i>
Rules of Law and KHI	1. Government Regulation Number 9 of 1975: 1. Article 31 paragraphs 1 and 2 2. Law No. 7 of 1989 concerning Religious Courts: 3. Article 82 paragraphs 1 and 4	Advice to maintain marriage
	1. Law No. 1 of 1974 2. Article 3 Compilation of Islamic Law	Goal of Marriage
	1. Government Regulation Number 9 of 1975: a. Article 19 letter f and Article 22 2. Compilation of Islamic Law: b. Article 116 letter f and Article 134 3. Law No. 1 of 1974: c. Article 39 paragraph (2)	Goal of Marriage
	1. Compilation of Islamic Law: a. Article 118.	Talak Raj'i
Foundation	1. Kitab Al-Ashbah wa Al-Nazhair, page 59	Benefits
Doctrine	1. Kitab Mada Hurriyah Az-Zaujain, Fi Al-Thalaq, page 83	
Proof of Letter	1. P.1 in the form of a photocopy of the applicant's resident card 2. P.2 in the form of Photocopy of Marriage Certificate	

	<ol style="list-style-type: none"> <li>3. P.3 in the form of a Photocopy of Family Card</li> <li>4. P.4 in the form of an original certificate proving that the dispute between the Applicant and the Respondent was reconciled by the village apparatus</li> </ol>	Confirmation of the Applicant's argument
Witness	<p>In essence, the witnesses explained the following:</p> <ol style="list-style-type: none"> <li>a. Between the Petitioner and the responden a legal husband and wife who were married on December 22, 1989 A.D.</li> <li>b. After marriage, the applicant and respondent lived in Jaya Baru sub-district, Banda Aceh for 28 years</li> <li>c. The Petitioner and the Respondent quarreled over economic problems had an affair and even remarried</li> <li>d. The Applicant and the Respondent have not lived together since May 29, 2017</li> <li>e. The Applicant and the Respondent no longer care for each other</li> <li>f. The Petitioner and the Respondent have been reconciled by the family, village officials and witnesses but to no avail</li> </ol>	Testimony

### **Analysis of Shafi'i School's View on Raj'i Talaq in Polyandry Case in Decision Number 383/Pdt.G/2020/MS. Bna**

Beginning this analysis, it should be emphasized that polyandry in Islamic law is clearly prohibited as mentioned in Surah An-Nisa Verse 24. In the end, it can be said that polyandry is detrimental, not only for men but also for women.<sup>21</sup>

Decision Number 383/Pdt.G/2020/MS. Bna, the judge considered the need for efforts in maintaining marriage in accordance with Government Regulation Number 9 of 1975 Article 31 Paragraphs 1 and 2 and Law Number 7 of 1989 concerning Religious Courts Article 82 Paragraphs 1 and 4. Polyandry and talak raj'i

<sup>21</sup>M. Quraish Shihab, *Women: From Love to Sex from Nikah Mut'ah to Nikah Sunnah from Old Bias to New Bias*, (Jakarta: Lentera Hati, 2007), p. 185.

are two different things and there is absolutely no legal connection in them, as is the case in Decision Number 383/Pdt.G/2020/MS. Bna. In decision Number 383/Pdt.G/2020/MS. There are quarrels and disputes between the two which occur due to economic factors, which continue so that the wife commits infidelity (polyandry), this is in accordance with the evidence by both witnesses which corroborates the arguments of the Petitioner.

In the Shafi'i school talaq has a legal basis for makruh, but in the imposition of talaq seen from the causes and factors that cause the marriage to be terminated, if we look at the problems in decision Number 383 / Pdt.G / 2020 / MS. Bna in the opinion of the Shafi'i school then this is a condition where it is obligatory for the husband to impose talaq on his wife.

In the Shafi'i school, the person who has the right to talaq is the husband, the one who has reached puberty and is intelligent. The wife has no right of divorce except with representation of the husband, or surrender from him.<sup>22</sup> In this case, the right of talaq is fully given to the husband so there is no need to wait to get permission in dropping talaq. The conclusion that can be drawn is that the dropping of triple talaq in one sentence according to the Shafi'i School is permissible but it is recommended to drop talaq sequentially in order to get out of the dispute of the scholars, as in Abu Haneefah's view it does not allow triple talaq at once.<sup>23</sup>

Therefore, it can be concluded that the difference that we can see between the judge's consideration and the Shafi'i school is the freedom of the husband to impose talaq anywhere and anytime, and the determination of the amount of talaq based on the husband's own intentions. There are similarities between the two, namely in the dropping of talaq, it is more advisable to drop talaq one by one in accordance with the explanation above.

If we look at the Shafi'i school about the matter that occurred in decision Number 383/Pdt.G/2020/MS. Bna does have quite complex problems, so talaq is recommended, for the benefit of both parties, this is in accordance with the principles and doctrines that are in the judge's consideration (Kitab Al-Asybah wa Al-Nazhair, page 59 and Kitab Mada Hurriyah Az-Zaujain, Fi Al-Thalaq, page 83) In the Shafi'i school it would not be a problem for a marriage to be broken only by talaq raj'i even if the matter that caused the marriage to break up Because of polyandry, but keep in mind that if in the Shafi'i school it is possible to drop talaq ba'in but at the whim of the holder of the talaq itself.

As for the Shafi'i school, talaq does not require witnesses to strengthen the argument or reason for the husband to impose talaq, this is because the understanding of the law of talaq itself is the basis and benchmark for whether talaq has become a good choice or not, in contrast to the judge's consideration in decision Number 383 / Pdt.G / 2020 / MS. Bna, testimony is needed to strengthen the husband's argument in giving reasons for divorce to impose talaq, therefore in the trial requires arguments

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<sup>22</sup>Wahbah Az-zuhaili, *Islamic Fiqh Volume 9...*, p. 328.

<sup>23</sup>Wahbah Az-zuhaili, *Islamic Fiqh Volume 9...*, p. 606.

that are strengthened by witnesses and other considerations, to satisfy that talaq can be dropped and sufficient reasons.

There are several factors that make the existing legal provisions and procedures can be different, if we look at the Shafi'i school then the imposition of talaq is related to divorce, where divorce is something private and disgraceful if this can be known by parties outside the litigant, it will not be good if there are other parties who interfere in this matter, Unlike the judge's consideration and the procedures of the Shar'iyah Court, if we look at the benefits in divorce that occur in Indonesia, especially Aceh, there are often uncontrolled divorces, this causes there are parties who are disadvantaged when disputing in this case related to talaq, therefore the State needs to regulate to create a disciplined and well-organized environment, so when there is talaq that falls outside the court then it is not counted and does not apply, in accordance with the Compilation of Islamic Law Article 117.

### Conclusion

The holding of the right of talaq in the Shafi'i school of talaq is not required by the permission of the *qadhi* and the husband's vow before the *qadhi*, and the imposition of talaq and the determination in imposing talaq is entirely left to the husband as the person who holds the right of talaq in his household, the measure of whether talaq is appropriate or not depends entirely on the husband's own understanding of talaq. Decision Number 383/Pdt.G/2020/Ms. Bna the judge reviewed several aspects in deciding such as the recommendation to maintain marriage, sufficient reasons, talaq imposed one by one, benefit, and testimony. In this respect in the Shafi'i school, all these aspects are appropriate, although there is a distinction that the witness in the dropping of talaq, is not necessary to strengthen her husband's argument in dropping talaq. Polyandry in Decision Number 383/Pdt.G/2020/Ms. Bna is only seen as a reason in the domestic matter filed, the Shar'iyah Court only considers whether the arguments or reasons for the party wanting this divorce are reasonable or not, when the reason is considered sufficient, permission will be given to impose talaq in accordance with the existing record of divorce cases. The amount of talaq granted is only adjusted to the registration of the litigant, so the determination of the amount of talaq rights cannot be determined alone. In Decision No. 383/Pdt.G/2020/Ms. Bna, the petitioner who filed for divorce for the first time, therefore in the order will be given permission to talaq one raj'i when the reason for divorce is said to be sufficient

### Reference

Al Quran al-Karim.

Abbas, Syahrizal and Datul Mutia, "Putusan Talak Raj'i pada Kasus Poliandri: Analisis Hukum Islam terhadap Putusan Hakim Mahkamah Syar'iyah Jantho Nomor 216/Pdt.G/2015/MS-JTH," *SAMARAH: Jurnal Hukum Keluarga dan Hukum Islam* 3, No. 1 (2019). DOI:10.22373/sjhk.v3i1.4865.

Banda Aceh Syari'iyah Court Decision Number 383/Pdt.G/2020/MS. Bna.

Compilation of Islamic law Presidential Instruction, No. 1 in 1991.

Departemen Pendidikan dan Kebudayaan, *Kamus Besar Indonesian Pusat Bahasa*, (Jakarta: PT Gramedia Pustaka Utama, 2011

Elkafilah.wordpress.com. *Talaq*. Retrieved via site: [https://elkafilah.wordpress.com/2012/05/23/talak/#\\_ftn2](https://elkafilah.wordpress.com/2012/05/23/talak/#_ftn2), on June 26, 2022.

Erowati, Eti Mul and Ikama Dewi Setia Triana, "Juridical Analysis of Polyandry Marriages Reviewed from Law Number 1 of 1974 on Marriage," *Jurnal Komunikasi Hukum (JKH)* 8, No. 2 (2022). DOI:10.23887/jkh.v8i2.47083

Hilmi, Ismi Lathifatul and Armi Agustar, "Review of Islamic Law and Positive Law: Regarding the Obligation to Comply with the Marriage Law," *El-Aqwal Journal of Sharia and Comparative Law*, 2023. DOI:10.24090/el-aqwal.v2i2.7786.

Law No. 1 of 1974 Concerning Marriage.

Mau, Dahlia Haliah, "The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 2 (2023). DOI: <http://dx.doi.org/10.22373/sjkh.v7i2.8519>.

Misran and Muza Agustina, "Factors of Polyandry in Society (Case Study in Pidie Jaya Regency)," *Samarah: Journal of Family Law and Islamic Law* 1, No. 1. (2017).

Najichah Najichah, "Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions," *Walisongo Law Review* 4, No. 2 (2022). DOI:10.21580/walrev.2022.4.2.13407.

Nurmila, Nina, "Polygamous Marriages in Indonesia and Their Impacts on Women's Access to Income and Property," *Al-Jami'ah: Journal of Islamic Studies* 54, No. 2 (2016). DOI:10.14421/ajis.2016.542.427-446.

Rizki, Sri, et.al., "Polygamy in The Indonesian Marriage Law System," *Meraja Journal* 3, No. 3 (2020). DOI:10.33080/mrj.v3i3.140.

Sahrani, Sohari and Tihami, *Fikih Munakahat*, cet 2, Jakarta: PT Raja Grafindo Persada, 2010.

Shibah, M. Quraish, *Women: from love to sex from nikah mut'ah to nikah sunnah from old bias to new bias*, Jakarta: Lentera Hati, 2007.

Shuja, Abu, *Fiqh Sunnah Imam Shafi'i*, Sukmajaya: Fathan Media Prima, 2018.

Yasin, Nur, *Sasak Islamic Marriage Law*, Malang: UIN-Malang Press, 2008.

Zuhaili, Wahbah, *Fiqh Imam Shafi'i Volume I*, Jakarta: Almahira, 2010.

Zuhaili, Wahbah, *Fiqh Imam Syafi'i Volume 2* Jakarta: Almahira Publishers, 2017.